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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,021	12/07/1999	JACK B. HOLLINS	M-8138-US	7210

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EXAMINER

JAIN, RAJ K

ART UNIT	PAPER NUMBER
2664	8

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/457,021	<b>Applicant(s)</b> HOLLINS, JACK B.
	<b>Examiner</b> Raj K. Jain	<b>Art Unit</b> 2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 21 April 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u>	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claim recites "a first portion" in line 5, it is not clear from the specification and/or drawings what constitutes "a first portion", and clarification is suggested and/or rewording of the claim.

### *Claim Rejections - 35 USC § 103*

1. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (US Pat 6,449,631) in view of Baba et al (US Pat 6,385,212).

Regarding claims 1 and 5, Takamoto discloses a method for transmitting data via a network wherein the transmission of a data packet by a transmitting side is acknowledged by an acknowledgment packet returned by a receiving side before the next packet can be transmitted, wherein said transmitting side carrying out the steps of: (1) dividing each data packet into a plurality of data packets; (2) furnishing each of the divided data packets with an identifier indicating a pre-division position in sequence of the data packet in question; and (3) transmitting said divided data packets **without waiting** for an acknowledgment packet to arrive for each data packet transmitted, see abstract and claim 1. Takamoto does not disclose the changing of data source from one source to another source, Baba discloses the changing of data source from one

source to another source, see Fig 13. Baba discloses a data switching apparatus used in transmission or broadcasting apparatuses for selecting and transmitting the data from a plurality of received data without changing coding unit, see Figs 2 and 13 and col 4 line 36 –col 6 line 35, and col 10 line 20 - 67. The changing of data sources provides a continuous supply of data without break in service and maintains buffer control by preventing overflow and underflow amongst different sources. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a data switching apparatus as taught by Baba within Takamoto so as to maintain a continuous supply of data transmission between transmitter and receiver during periods of inactivity from one source and/or bad data from a given source and therefore requiring retransmission which would otherwise provide delay in the network. Regarding claim 4, Takamoto discloses discarding of data packets as part of packet transmitting program (2404) see Fig 8 and respective portions of the specs.

#### *Claim Objections*

2. Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

3. This application contains claims drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01

4. Once again for benefit of the Applicant;
  - I. Claims 1-5, are drawn to a method of generating and transmitting data packets, with signaling for request, transmission and change of source addressing, classified in class 370, subclass 229.
  - II. Claims 6-11, are drawn to a refetch logic scheme with data ports, bus and control lines generating and propagating data packets between the various ports, classified in class 370, subclass 469.

The above inventions are separate, distinct, and independent. Neither requires other for its implementation, they have separate statuses in the art as shown by their different classification. Each invention, if allowable would be capable of supporting a separate patent. Therefore, restriction for examination purposes is proper.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj K. Jain whose telephone number is 703-305-5652. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 305-3988, (for formal communications intended for entry)

**Or:**

(703) 305-3988 (for informal or draft communications, please label "Proposed" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington, VA. Sixth Floor (Receptionist).

RJ  
June 10, 2003

*SL*  
A. Patel  
Patent Examiner